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# The obligation to extradite or prosecute (*aut dedere aut judicare*)

## Comments and information received from Governments

**Addendum 4**

## II. Comments and information received from Governments

### Poland

#### A. International treaties by which a State is bound, containing the obligation to extradite or prosecute (*aut dedere aut judicare*), and reservations made by that State to limit the application of this obligation

1. Poland is party to various international instruments dealing with extradition or containing a clause on the obligation to extradite or prosecute,[1] namely: the International Convention for the Suppression of Counterfeiting Currency, and Optional Protocol, Geneva, 1929; the Geneva Conventions (the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949; the Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, 1949; the Convention relative to the Treatment of Prisoners of War, 1949; and the Convention relative to the Protection of Civilian Persons in Time of War, 1949); the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, opened for signature at Lake Success, New York, 1950; the European Convention on Extradition, Paris, 1957, its Additional Protocol of 1975, and its

[1] The details of multilateral treaties previously cited are not reproduced in the present addendum as they can be found in the original report (A/CN.4/579) and its first addendum (A/CN.4/579/Add.1).

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Second Additional Protocol of 1978;[2] the Single Convention on Narcotic Drugs, New York, 1961; The Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 1970; the Convention on Psychotropic Substances, Vienna, 1971; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1971; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 1973; the European Convention on the Suppression of Terrorism, Strasbourg, 1977; the International Convention against the Taking of Hostages, New York, 1979; the Convention on the Physical Protection of Nuclear Material with Annex I and II, Vienna and New York, 1980; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 1984; the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 1988; the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Rome, 1988; the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 1988; the Convention on the Safety of United Nations and Associated Personnel, New York, 1994; the International Convention for the Suppression of Terrorist Bombings, New York, 1998; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Paris, 1997; the Criminal Law Convention on Corruption, Strasbourg, 1999; the International Convention for the Suppression of the Financing of Terrorism, New York, 1999; the United Nations Convention against Transnational Organized Crime, New York, 2000; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, New York, 2000; the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, New York, 2000; and the United Nations Convention against Corruption, New York, 2003.

2. Poland has also signed several bilateral treaties on extradition and legal assistance: the Treaty with the United Kingdom of Great Britain and Northern Ireland for the Surrender of Fugitive Criminals, Warsaw, 11 January 1932; the Agreement with the People's Democratic Republic of Algeria on legal relations regarding civil and criminal affairs, Algiers, 9 November 1976; the Agreement with the Kingdom of Morocco on legal assistance in civil and criminal affairs, Warsaw,

[2] Regarding those instruments, Poland made a Declaration contained in the instrument of ratification, deposited on 15 June 1993, in which the Republic of Poland declared in accordance with paragraph 1 (a) of article 6, that it would under no circumstances extradite its own nationals and that, for the purposes of the Convention in accordance with paragraph 1 (b) of article 6, persons granted asylum in Poland would be treated as Polish nationals. Later, the Republic of Poland made another declaration contained in a letter dated 24 February 2005 from the Permanent Representative of Poland and registered at the Secretariat on 24 February 2005 which read as follows: "in accordance with article 28, paragraph 3, of the Convention, the Republic of Poland hereby declares that since 1 May 2004 in relations with the member States of the European Union, it will apply the internal legal provisions implementing the provisions of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between member States (2002/5 84/JHA) insofar as the Framework Decision is applicable in relations between Poland and these States". The provisions of the aforementioned Framework Decision were implemented in Polish law by virtue of the statute amending the Penal Code, the Code of Criminal Procedure and the Code of Misdemeanours, dated 18 March 2004.

21 May 1979; the Agreement with the Republic of Cuba on legal assistance in civil, domestic and criminal affairs, Havana, 18 November 1982; the Agreement with the Syrian Arab Republic on legal assistance in civil and criminal affairs, Damascus, 16 February 1985; the Agreement with the Republic of Tunisia on legal assistance in civil and criminal affairs, Warsaw, 22 March 1985; the Agreement with the Great Socialist People's Libyan Arab Jamahiriya on legal assistance in civil, commercial, domestic and criminal affairs, Tripoli, 2 December 1985; the Agreement with the Democratic People's Republic of Korea on legal assistance in civil, domestic and criminal affairs, Pyongyang, 28 September 1986; the Agreement with the Republic of Iraq on legal and judicial assistance in civil and criminal affairs, Baghdad, 29 October 1988; the Agreement with the Arab Republic of Egypt on legal assistance in criminal affairs, transfer of sentenced persons and extradition, Cairo, 17 May 1992; the Agreement with the Socialist Republic of Vietnam on legal assistance and legal relations concerning civil, domestic and criminal affairs, Warsaw, 22 March 1993; the Agreement with the Republic of Belarus on legal assistance and legal relations regarding civil, domestic, employment and criminal affairs, Minsk, 26 October 1994; the Extradition Treaty with the United States of America, Washington, 10 July 1996; the Agreement with the Slovak Republic on supplementation and facilitation of the implementation of the 1957 European Convention, Jaworzyna Tatrzanska, 23 August 1996; the Treaty with Australia on extradition, Canberra, 3 June 1998; the Agreement with Mongolia on legal assistance and legal relations in civil, domestic, employment and criminal affairs, Warsaw, 19 October 1998; the Extradition Treaty with the Republic of India, New Delhi, 17 February 2003; and the Agreement with the Federal Republic of Germany on supplementation and facilitation of the implementation of the 1957 European Convention on extradition, Berlin, 17 July 2003.

## B. Domestic legal regulations adopted and applied by a State, including constitutional provisions and penal codes or codes of criminal procedures, concerning the obligation to extradite or prosecute

3. The Constitution of the Republic of Poland was adopted by the National Assembly on 2 April 1997. Its article 55 reads as follows:

> "1. The extradition of a Polish citizen shall be prohibited, except in cases specified in paragraphs 2 and 3.
>
> "2. Extradition of a Polish citizen may be granted upon a request made by a foreign State or an international judicial body if such a possibility stems from an international treaty ratified by Poland or a statute implementing a legal instrument enacted by an international organization of which the Republic of Poland is a member, provided that the act covered by a request for extradition:
>
> (1) Was committed outside the territory of the Republic of Poland;
>
> (2) Constituted an offence under the law in force in the Republic of Poland or would have constituted an offence under the law in force in the Republic of Poland if it had been committed within the territory of the Republic of Poland, both at the time of its commitment and at the time of the making of the request.

"3. Compliance with the conditions specified in paragraph 2, subparagraphs (1) and (2) shall not be required if an extradition request is made by an international judicial body established under an international treaty ratified by Poland, in connection with a crime of genocide, crime against humanity, war crime or a crime of aggression, covered by the jurisdiction of that body.

"4. The extradition of a person suspected of the commission of a crime for political reasons but without the use of force shall be forbidden, so as an extradition which would violate rights and freedoms of persons and citizens.

"5. The courts shall adjudicate on the admissibility of extradition".

Further, article 604 of the Code of Criminal Procedure, Act of 6 June 1997, provides:

"1. Extradition is inadmissible if:

(1) The person to whom such a motion refers is a Polish citizen or has been granted the right of asylum in the Republic of Poland;

(2) The act does not have the features of a prohibited act, or if law stipulates that the act does constitute an offence, or that the perpetrator of the act does not commit an offence or is not subject to penalty;

(3) The period of limitation has lapsed;

(4) The criminal proceedings have been validly concluded concerning the same act committed by the same person;

(5) The extradition would contravene Polish law;

(6) There is a justifiable concern that the prosecuted person may be sentenced to the death penalty or that the death penalty may be executed in the State requesting the extradition;

(7) There is a justifiable concern that rights and freedoms of the prosecuted person may be infringed in the State requesting the extradition;

(8) It concerns the person prosecuted for offences committed without violence for political reasons.

"2. In particular, extradition may be refused, if:

(1) The person to whom such a motion refers has permanent residence in the Republic of Poland;

(2) The criminal offence was committed within the territory of the Republic of Poland, or on board a Polish vessel or aircraft;

(3) Criminal proceedings are pending concerning the same act committed by the same person;

(4) The offence is subject to prosecution on a private charge;

(5) Pursuant to the law of the State which has moved for extradition, the offence committed is subject to the penalty of deprivation of liberty for a term not exceeding one year, or to a lesser penalty or such a penalty has been actually imposed;

(6) The offence with which the motion for extradition is connected is of a military, fiscal or political nature other than that referred to in paragraph 1 subsection 8; or

(7) The State which has moved for extradition does not guarantee reciprocity in this matter.

"3. In the event indicated in paragraph 1 subsection 4 and paragraph 2 subsection 3, the resolution of the motion for extradition may be adjourned until the criminal proceedings pending against the same person in the Republic of Poland are concluded, or until he has served the sentence imposed or has been granted remission of the penalty."

## C. Judicial practice of a State reflecting the application of the obligation *aut dedere aut judicare*

4. Pursuant to the Code of Criminal Procedure, applications of foreign States for the extradition of prosecuted or convicted persons are subject to court rulings. In deciding on the admissibility of extradition, the court is guided by the aforementioned provisions of the Constitution and the Code of Criminal Procedure. The court ruling on extradition is subject to appeal by the prosecuted person and the prosecutor. During the years from 2004 to 2007, the courts usually determined inadmissibility of extradition of the basis of the provisions of article 604, paragraph 1 subsections 5 and 7 of the Code of Criminal Procedure, namely, incompatibility of extradition with Polish law, or justified concern that the freedoms and rights of the extradited person would be violated in the State seeking extradition.

5. The final decision on the application of a foreign State for extradition is taken by the Minister for Justice of the Republic of Poland. Only a ruling in which the court determines inadmissibility of extradition is binding on the Minister for Justice. On the other hand, the Minister is entitled to deny extradition even if the court finds that it is admissible. In taking the final decision, the Minister for Justice is guided by criminal policy considerations. However, pursuant to the resolution of the Supreme Court of 17 October 1996, the Minister cannot refuse extradition by making an independent ascertainment of facts that differs from the ascertainment made by the court in its ruling on the admissibility of extradition. The Minister's decisions on extradition are not subject to appeal. In practice, during the period from 2004 to 2007 there have been no instances of the Minister for Justice refusing extradition despite a court ruling allowing extradition.

6. In 2004, four extradition requests have been refused out of 63; in 2005, 10 extradition requests were refused out of 27; in 2006, four were refused out of 24; and in 2007, so far, there have been three requests of extraditions.

7. An analysis of extradition proceedings conducted during the years from 2004 to 2007 indicates that the complete procedure, from the lodging of the application by a foreign State until the decision of the Justice Minister, lasts on average seven months.

### D. Crimes or offences to which the principle of the obligation *aut dedere aut judicare* is applied in the legislation or practice of a State.

8. Prosecuted or convicted persons may be extradited upon the application of a foreign State in connection with the commission of any crimes or offences covered by international treaties binding on the Republic of Poland. During the period from 2004 to 2007, the extradition applications of foreign States usually referred to offences against property and life and health, and those involving forgeries.